The principle of the Bill having been affirmed, the mover proposed that the Bill be referred to a Select Committee consisting of Messrs. Subba Aiyar, Kunjan Pillai, G. Parameswaran Pillai, Kayalam Parameswaran Pillai, Rajaraja Varma, Kumaran Asan, K. Parameswaran Pillai, Trivikraman Vasudevar and the mover to report within four months.

Seconded by Mr. Subba Aiyar.

Carried.

THE LAND ASSIGNMENT BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Government Land Assignment Bill and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

Clause 6.

Mr. G. Parameswaran Pillai moved that the following be substituted for Clause 6 :—

"No Civil Court shall entertain any suit against Government in respect of any order passed under this Regulation, unless it shall be instituted within one year from the date on which the cause of action arises, but nothing in this Section shall apply to suits instituted on the ground that the land in respect of which the order complained of has been passed is not Government land".

He said:—"My amendment may be divided into two parts. First with regard to bar of civil suits, I am aware that the Clause under discussion enacts no new rule of law. The assignment of Government land being purely discretionary with Government, ordinarily, no one can claim a right of suit enforcing Government to use their discretion in a particular manner. Hitherto Government have been laying down rules regulating such assignment, but they were purely administrative rules. But under this Bill, these rules derive statutory force. Thereby certain rights accrue both to Government and the people. In the Statement of Objects and Reasons, Mr. Subba Aiyar has stated that rules framed under the Regulation will have the force of law and that this is to the interest of all parties concerned. Certainly so, and I took it as a concession by Government. I little thought that when Government were prepared to regulate by law the conduct and procedure of the Revenue officers in the assignment of Government land, they would at the same time deprive the people of their right of suit when the violation of such rules furnished a cause of action. Why should Government feel so nervous of the civil courts? Whose interest is served by the prohibition of civil suits? The Government observe that the object they have in view in promulgating this measure is the protection of the ignorant ryot from the wily exploiter and the unscrupulous capitalist, and the setting on their feet, for the ultimate benefit of the country, of the industrious poor and the unfortunate landless. They further believe that all opposition is due to an erroneous understanding of the subject. The object above set forth is most unexceptionable. But the question is how far the provisions in the Bill we have protested against tend to promote the above object. It cannot be that civil courts exist to retard justice and not to promote it; nor can it be that they are completely in the hands of the wily exploiter and that the ignorant ryot can expect no justice from such courts. I am sure my friend the law member would give a decisive answer in favour of the civil courts in this respect. If the civil suit is prohibited, then Government alone will be reaping the advantages that may legally accrue from the proposed change in the law. When the acts of the revenue officers are liable to be scrutinised by a court of law, many of the vagaries now associated with the assignment of puduval lands will cease to exist. The civil court is perhaps the only safe tribunal for the ignorant ryot. Several are the complaints received by me that during the re-survey operations in Nedumangad many an illiterate man found that plots that had been reclaimed and improved upon by him for a long time did no longer belong to him but to some rich intruder from abroad. The only remedy open to them under the law is to sue for the value of improvements effected by them because the question of assignment is purely discretionary with the Government and the civil courts have in many instances awarded them the relief [illegible]d for and have been obliged to remark that although the registry was unjust, the [illegible] not interefere with it. It is urged by the law member that the Tahsildars and [illegible]ikars are as much qualified as Munsiffs and Judges and are recruited from the [illegible] class of men and that they have the same sense of responsibility as officers of [illegible]tments. Without meaning

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any disparagement to Tahsildars and Peishkars, I might at once say that this is most unconvincing. With perhaps a few honourable exceptions it is a well-known fact that Tahsildars and Peishkars do not devote as much personal attention to the merits of each case as is desirable or as is expected of a Munsiff or a Judge. Even the most ignorant ryot will affirm that he expects substantial justice, more from a civil court than from a revenue officer. That there is considerable difference in the temperament of the two sets of officers can admit of no doubt. It is remarkable that when even the best judicial officer is appointed as Peishkar or Dewan, there is a complete change of outlook noticed in him. That sense of judicial fairness or independence noticeable in the case of judicial officers is at a discount even with the highest revenue functionary. It is not so much the fault of the man as of the system. I am only surprised that my friend the law member does not acknowledge this fundamental difference between the two sets of officers. In the circumstances it is no consolation to be told that the Tahsildars and Peishkars are responsible officers. The revisional authority of the Dewan is seldom, if ever, exercised in the matter of puduval cases. There is no opportunity given to the party to submit his case regarding the competency of the revision petition. Every such petition must necessarily partake of the nature of a second appeal. It will be hard indeed that on this ground only the petitions should be rejected. Even the High Court hears the petitioner to decide whether it is a fit case for interference in revision. The case is different in the Huzur Office. As I said before, the view-points are different with the civil and the executive authorities. For these reasons justice requires that when once the rules framed under the Regulation are given statutory force the right of the subject to seek redress in a civil court for violation of such rules should not be taken away.

The second part of my amendment relates to the proviso which lays down that suits instituted on the ground that the land in dispute is not Government land shall be filed within one year of the date of cause of action. The object of this provision is said to be to overrule a Full-Bench decision of the High Court to the contrary. This matter has been dwelt upon at considerable length by me and my friends when the Bill was introduced, and I do not wish to repeat all that I said then. But I propose to draw the attention of the Council to one or two aspects of the question. In the first place the Land Assignment Bill deals with assignment of Government lands only. So, evidently, the acts of Government or the Revenue officers under this Regulation can legitimately relate only to Government lands. It is certainly dangerous to invest Government or revenue officers with legal authority to adjudicate questions of title to a disputed property where the rival party happens to be the Government itself. I suppose this legislature has no intention to invest Government with any such power. If the decision of a revenue officer or Government that a certain plot is Government land and not private land should legally bind the party concerned unless set aside in due course, then, as has been remarked by the late Chief Justice Mr. Raman Menon, it would offend the fundamental maxim of justice that a man should not be judge of his own cause. When Government have no right to assume jurisdiction in cases relating to lands other than Government lands, is it either just or logical to prescribe a special period of limitation in regard to suits relating to such lands? In dealing with puduval lands etc., it has been uniformly recognised by the High Court that Government are acting only in their proprietory and not sovereign capacity. And this position has been accepted by all eminent English jurists as well. If so, where is the justification for a legislature to go back upon all these well-recognised principles and declare that, in Travancore, Government and their revenue officers can exercise the functions which legitimately fall within the province of civil courts? If there have been decisions prior to the Full Bench ruling in support of the position now taken up by the Government, there have been several decisions to the contrary as well (I. T. L. R., II. T. L. J., 12. T. L. R., etc.).

When rules are framed under this Regulation and when such rules are given the force of law, it is clear that all orders passed under this Regulation will be final unless set aside within one year. As I have already shown there is no justification for Government to curtail the period of limitation available to parties who dispute the Government's title to a particular plot of ground.

In the Select Committee, an amendment has been effected with reference to the clause in question. They say that the period of limitation of one year will apply only in the case of a person who was a party or privy to and had notice of the proceeding under this Regulation. With great respect I must say that this is no improvement at all. For if the person concerned was not a party or privy to and had no notice of the proceeding, no civil court will attach any value to the proceeding. Even the current of decisions relied on by Mr. Subba Aiyar proceeds on the assumption that unless the party had due notice

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of the proceeding, the same will not bind him. The mere fact that Mr. Subba Aiyar omitted even this in his draft Bill and that he consented to incorporate it in the revised Bill is after all no step forward. The real issue is not whether you would be satisfied with notice. Suppose to my knowledge a wrong is committed by some person. If the ordinary law allows a particular period for me to seek redress there should be no difference whatever so far as my right to sue is concerned when the wrong-doer happens to be Government acting in their private and not sovereign capacity. Even on the merits, the provision regarding notice may be easily evaded. It is no doubt a question of fact to be proved in each case. But the Sirkar records may be easily procured to raise a presumption that notice was given to the party, and the party might find it difficult to rebut the presumption. Again, why should the true owner undergo all this trouble merely because Government have chosen to commit a wrong?

It may be said that vested interests will be affected by extending the period of limitation. Surely, more sacred and lawful rights will be in jeopardy by curtailing the period of limitation which is otherwise available to a party. If it is proved that Government had wrongfully registered a land as puduval, whereas it belonged rightfully to another as ayacut holding, the person who derives title from the wrong-doer is certainly not entitled to any preferential treatment. Why should the true owner be driven to a court of law within one year merely because the Government chose to do the wrong thing? The title of the true owner, if subsisting, must be declared paramount. To me it appears that there will be greater injustice and hardship resulting from the rule proposed by Mr. Subba Aiyar, than from the ruling laid down by the Full Bench of the High Court. I therefore beg to move that the amendment referred to be accepted".

Seconded by Mr. Nidiry.

Mr. Subba Aiyar:—

"I beg to oppose the amendment. The amendment was threshed out at the Select Committee which came to the conclusion that it could not be accepted. Of course, one who thinks that everything connected with the Revenue Department is wrong and that every revenue officer is absolutely indifferent about his work, cannot possibly be convinced of the reasonableness of the provision. If we go into the matter deeply every officer has a discretion vested in him, be he Tahsildar, Peishkar or any other officer. After all, what is it that my friend wants? He wants that in regard to an admitted poramboke registered in the name of A; if B was contesting it, the civil court should have the right to say whether A or B should be given the land. Here the Tahsildar or the Peishkar investigates the matter, goes to the spot and comes to a conclusion and decides. In the civil court the Judge does not ordinarily make a personal inspection. An Amin or somebody else goes to the spot and makes a report and upon that the Court decides the question. I do not see why in regard to a property which admittedly belongs to the Sirkar, the decision of the revenue officer should be set at naught and a decision should be obtained *de novo* through a civil court by asking the party to waste his money. If the property is not Government land, it may be necessary to give him a right of suit. Even there, strictly speaking, the revenue officer exercises a judicial discretion vested in him. It is open to the party to sue if there is a completed contract or if the land is not Government land. So far as the limitation is concerned if a man has been a party to the transaction and if he receives a notice that his claim has been rejected, why should he be given 12 years? The moment the land is registered, the registry-holder should be allowed to improve it. If the registry-holder improves the land and the contesting party stands by, is it fair to allow him to sue after a long time until he knows that he could benefit by the improvement and might pay for the value of the improvement? In these days when land is very dear, why should the registry-holder allow the land to lie without being improved? The other person has been a party to the proceedings and as I said he gets notice of the revenue decision. Hence the clause says that he is allowed one year to bring in a Civil Suit and I do not think that there could be any reasonable hardship to the man".

President:—

"I should like to clear one point. In regard to Government land, supposing a man makes substantial improvements and assuming that the Tahsildar or the Peishkar or even the Government fail to look into the matter properly and the land is assigned away to another and the man who makes improvements does not get redress, what is the remedy?"

Mr. Subba Aiyar:—

"In that case he can sue for the value of improvements. He will not get the land, but he will get the value of improvements."

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Mr. G. Parameswarn Pillai :—

"I am not sure whether the point is so clear. When the Tahsildar declares that A and not B has improved the land and passes an order accordingly, under the rules issued in pursuance of this Regulation, that order will be an effective order and a suit will not lie in respect of such an order."

President:—

"If we give the right of suit in regard to each and every order passed in regard to Government land we open a very wide field and there will be no finality."

Mr. G. Parameswaran Pillai:—

"But then where is the remedy in regard to the cases just pointed out?"

President:—

"Mr. Subba Aiyar would please make the point clear. The case pointed out by me is the only one in which the party has a real hardship. In the preparation of the rules, care has to be taken to see that the man who enters on the land and makes improvements gets it. It is just possible that the man misses the land. Of course we can make the rules and the party may be heard by the revenue authorities before final orders are passed. Anyhow, I should like to hear Mr. Subba Aiyar on the point."

Mr. Subba Aiyar:—

"The Section is clear. It only prohibits a suit against Government from the order of the revenue officer. If there are two parties, A and B, applying for registry, the revenue officer may direct registry in favour of A. If the land is a Government land, B cannot sue Government to have the order cancelled and have a registry in his name. The prohibition is for a suit against Government and against the order. B may however sue A for the value of the improvements effected by him. The law is just the same now. There are desicions in which value of improvements has been awarded though the registry could not be interfered with. With regard to time-limit it is clear that if a man were not a party to a suit or had no notice, one year's rule could not apply."

After a short discussion, Mr. G. Parameswaran Pillai suggested that the period of one year provided in the Clause be raised to two years. Mr. Subba Aiyar accepted the proposal and it was carried.

Mr. G. Parameswaran Pillai then moved that the following be added to the Proviso.

"And such cause of action shall not be deemed to have arisen before the date on which the person received or was duly given notice of the order in respect of which the suit is sought to be filed."

The motion was seconded by Mr. Nidiry and it was agreed by the Council after some discussion that the words "of service of the notice of such order" be substituted for "on which the cause of action arises" in line 3 of the Proviso.

CLAUSE 7.

Mr. G. Parameswaran Pillai in moving that sub-clause 2 be deleted said:—

"The Government are unwilling to allow the subject to file a suit in respect of orders passed under the rules. When the violation of such rules may furnish a cause of action, it is meaningless to say that the rules have the force of law, when the civil courts are not empowered to decide such cases. Hence I think that it is not necessary that Rules framed should be given the force of law. When they have the force of law, Government get certain rights but not the subject; so far as the subject is concerned he is in a disadvantageous position. If Government allow the rules to have statutory force, then there should be safeguards provided for the subjects through civil courts.

The motion not having been seconded fell through.

The consideration of the Bill being over, Mr. Subba Aiyar moved that the Bill be read again on a future day of which notice should be given.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

THE CRIMINAL PROCEDURE CODE AMENDMENT BILL.

Mr. Subba Aiyar in presenting the report of the Select Committee on the Criminal Procedure Code Amendment Bill moved that the report and the Bill be taken up for consideration ot once.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

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